IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
INCOME TAX APPLICATION NO.59 OF 1998

Shri M.C.Patel (HUF) ...Appliants.

V/s.

The Commissioner of Income-tax ...Respondents.

Mrs. V.B.Patel for the Applicants.
Dr.P.Daniel with Mr.G.Hariharan for the Respondent.

CORAM: S.RADHAKRISHNAN &
J.H.BHATIA, JJ.
DATE : 8th August, 2005.

P.C.:

1. Heard the learned counsel for the Applicant and the learned counsel for the Respondent. In the above Application, reference is sought with regard to the following two substantial questions of law under section 256(1) of the Income Tax Act.

i)"Whether on the facts and in the circumstances of the case and in law, the Hon'ble Tribunal was right in holding that the assessee has not discharged the primary onus of proving the identity and capacity of the creditors as well as genuineness of the transaction ?

ii)"Whether on the facts and in the circumstances of the case and in law, the Hon’ble Tribunal was right in confirming the addition of Rs.9,01,000/- being the loans received during the year as unexplained cash credit under section 68 of the Income Tax Act ?

2. We have perused the Tribunal’s order dated 1st May, 1997 wherein the Tribunal has referred to the earlier order of the Tribunal and has categorically observed that after careful consideration the Tribunal had come to a conclusion that nowhere onus to prove identity and capacity of creditors as well as genuineness of the transaction which was primarily on the assessee was discharged by them. In the facts and circumstances of the case and based on the records available it was clear that assessee had not discharged its primary onus of proving. Bank passbooks were not even produced and unless and until the said burden of proof is discharged there is no question by the Department having the onus to prove

the same. The Tribunal has also observed that the Applicant assessee could have requested for summoning the creditors. Under these circumstances, the above questions of law purely based on the findings of the facts and we are in agreement with the reasoning of the Tribunal. The Assessee has failed to discharge its primary onus to prove the identity and capacity of the creditors. We do not find any substance in the above Application. The Application stands dismissed.

(S.RADHAKRISHNAN,J.)

(J.H.BHATIA, J.)